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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,551	06/28/2002	Satoshi Mekata	AKY-0002	3224

23353 7590 07/29/2004

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EXAMINER

LEVY, NEIL S

ART UNIT PAPER NUMBER

1616

DATE MAILED: 07/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/089,551

Applicant(s)

MEKATA ET AL.

Examiner

Neil Levy

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/11/97.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 4-9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. “-Not substantially include lower alcohol-”.

We find no support for this; applicant refers to p.8, lines 24-25, where it says “-invention may contain- lower alcohol,-and on p.9, lines 3-7, said lower alcohols helps and dissolves, and include ethanol, propanol, isopropanol.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Suk et al Ca 1166974.

The rejection of record is maintained, in essence.

The instant claims are 10-60% concentrate, and 90-40% DME; other components may be present, as the instant claims fail to state what the basis of the % is-Suk provides added 6% film former-this does not imede the makeup of the function of the claimed composition. Since the compositions are the same, the flash points, phase are also.

Applicant states the film former does not affect flash point. The alcohol of Suk is that of the instant, 1% not substantial. The declaration, shows not all of Suk is flash point free; some compositions are by adjusting ratios of ingredients.

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Claims 4-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson WO-96/22686 in view of Dohara et al 5055299.

The rejection of record is maintained.

Applicant's arguments filed 4/9/04 have been fully considered but they are not persuasive. Applicant argues for no alcohol-however the instant application favors alcohol. Applicant argues no water in cited references and required in claim 4-are see the water as an agent rationally adjustable by the artisan. The single phase applicant argues as outside of Nelson its not so seen, as instant. Claim 5 shows hydrophilic and oleophilic phases, achievable by Nelson (bottom p.4).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 571-272-0619. The examiner can normally be reached on T-F from 7:00a.m to 5:30p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through

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Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Neil S. Levy". The signature is fluid and cursive, with the first name "Neil" and last name "Levy" clearly distinguishable.

Levy/tgd

July 26, 2004

NEIL S. LEVY
PRIMARY EXAMINER